

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 10-18 and 56-89 are pending in the application, with claims 10, 56, 65, 74, 83, 85, 87, and 89 being the independent claims. Claims 10, 56, 65, 74-83, 85, 87, and 89 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

***Telephone Interview Held October 28, 2009***

Applicants' representative would like to thank the Examiner for the telephone interview held on October 28, 2009. During the interview, it was agreed that the proposed amendments would overcome the rejection under 35 U.S.C. § 112, first paragraph. No agreement was reached on whether the amendments would overcome the rejection under 35 U.S.C. § 101.

The Examiner further indicated that clarification of the claim term "character traits" could serve to distinguish the instant claims from Surace. Applicants have amended the claims in order to address the Examiner's concerns, and believe the claims are distinguishable from Surace on at least this basis.

The Examiner is invited to contact the undersigned in the event that any further amendments are identified which would better place the claims in condition for allowance.

***Rejection under 35 U.S.C. § 101***

The Examiner has rejected claims 74-82, 87, and 88 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse.

Independent claims 74 and 87 have been amended to recite, "a tangible memory storage device having instructions stored thereon." Support is found, *inter alia*, at paragraph [0043] of the Published Specification.

The basis for the Examiner's rejection is unclear. The Examiner argues that "[s]ince the 'computer usable medium' is not defined in the disclosure, it may encompass a variety of media ranging from a piece of paper to a carrier wave/signal, communication or transmission type of medium." (Office Action, p. 3). This line of argument ignores the word "tangible" in "tangible computer usable medium," and which is also included in the present language "tangible memory storage device." Applicants' argument in the Amendment and Reply filed on June 17, 2009 ("June 2009 Reply") noting that this language excludes non-tangible computer usable media, such as carrier waves, appears to have been ignored by the Examiner.

The Examiner's further argument that the language may encompass "a piece of paper" is inconsistent with any reasonable reading of "computer usable medium," as well as "memory storage device" as presently recited. Although the Examiner is correct in

giving pending claims "their broadest reasonable interpretation consistent with the specification," the Examiner must keep in mind that "[t]he broadest reasonable interpretation of the claims *must also be consistent with the interpretation that those skilled in the art would reach.*" (M.P.E.P. § 2111, citing *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999)).

The current recitation of a "*tangible* memory storage *device*" excludes non-statutory subject matter which is the basis of this rejection. Although the specification recites that "[t]he instructions and data are programmed as a sequence of computer-executable codes in the form of electrical, magnetic, or optical signals," what is being claimed is the "*tangible* memory storage *device*," and not any signals themselves. Therefore, the claims produce a useful, concrete, and tangible result, and satisfy the requirements of 35 U.S.C. § 101.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 74-82, 87, and 88 under 35 U.S.C. § 101.

### ***Rejection under 35 U.S.C. § 112***

The Examiner has rejected claims 74-82, 87, and 88 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants respectfully traverse.

The Examiner alleges that "[t]he limitation 'a tangible computer usable medium having stored thereon computer-executable instructions that, if executed by a computing device, cause the computing device to perform a method' was not disclosed in the original specification, to which Applicants do not acquiesce.

First, the Examiner is once again reminded that "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." (M.P.E.P. § 2163.02). The claim language that is the subject of this rejection, to the extent of any inclusion of subject matter, limitations, or terminology not present in the application as filed, does not involve "a departure from, addition to, or deletion from the disclosure of the application as filed." (M.P.E.P. § 2163.02).

Applicants previously noted in the June 2009 Reply that it would be clear to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed upon reading, by way of example and not limitation, at least paragraphs [0227]-[0230] of the instant Published Specification. Applicants add to this reference paragraph [0043], which provides support for the claim language as previously written, and provides direct support for a "tangible ***memory storage device*** having instructions stored thereon," as currently recited in amended claims 74 and 87.

This paragraph reads:

The logic code conventionally includes ***instructions*** and data stored in data structures resident in one or more ***memory storage devices***. Such data structures impose a physical organization upon the collection of data bits stored within computer memory. The instructions and data are programmed as a sequence of computer-executable codes in the form of electrical, magnetic, or optical signals capable of being stored, transferred, or otherwise manipulated by a processor.  
(Published Specification at [0043])

It would therefore be clear to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed upon reading, by

way of example and not limitation, at least paragraph [0043], as well as paragraphs [0227]-[0230], of the instant Published Specification.

The Examiner is further reminded of the obligation to "take note of the applicant's argument and answer the substance of it." (M.P.E.P. § 707.07(f)). In this instance, the Examiner has failed to address why support is not found in the cited paragraphs, as argued at page 15 of the June 2009 Reply.

Based further on the telephone interview of October 28, 2009, it is believed that the amended claim language overcomes the rejection under 35 U.S.C. § 112, first paragraph. However, the Examiner is invited to contact the undersigned if any additional clarification or amendment is requested in order to satisfy the rejection.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 74-82, 87, and 88 under 35 U.S.C. § 112, first paragraph.

***Rejections under 35 U.S.C. § 103***

***Claims 10, 56, 65, 74, and 89***

The Examiner has rejected claims 10, 56, 65, 74, and 89 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Application Publication No. 2005/0091056 to Surace et al. ("Surace") in view of U.S. Patent No. 5,805,784 to Crawford ("Crawford"). Applicants respectfully traverse.

**1. The Examiner has failed to meet the obligation under M.P.E.P. § 707.07(f) to answer the substance of Applicants' arguments**

In the Final Rejection, the Examiner repeats almost verbatim the rejection previously presented in the Office Action of February 17, 2009 ("February 2009 Office

Action"). In the February 2009 Office Action, claims 10, 56, 65, and 74 were rejected under 35 U.S.C. § 102(e) over Surace. The rejection spanning pages 6 and 7 of the February 2009 Office Action is identical to the present rejection, except that the Examiner has changed the references to the claim language to account for Applicants' amendments.

The only difference from the February, 2009 rejection is that the current rejection is made under Section 103, combining Surace with Crawford. Namely, the Examiner argues that "Surace does not specifically teach that the consistent personality defines adjustments to one or more interface features," relying on Crawford to allegedly supply the missing teaching or suggestion. (Office Action, p. 6).

The Examiner is once again reminded of the obligation to "take note of the applicant's argument and answer the substance of it." (M.P.E.P. § 707.07(f)). In this instance, the Examiner has failed to address Applicants' *entire argument* with regard to Surace in the June 2009 Reply.

As previously argued, in rejecting claim 10, the Examiner cites to two different processes in Surace as allegedly teaching or suggesting "presenting an input interface to enable the user to specify individual character traits." The first process is concerned with the *implementation* of a voice user-interface, enabling an implementer (or developer) of the system to define a personality type, including such characteristics as "age, gender, education, employment history, and current employment position." (Surace at [0043]). The Examiner then conflates the *developer* of the Surace system with the *subscriber* of the Surace system, citing to the process whereby a subscriber is able to select "from

several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]).

It appears that the Examiner wishes to treat both the developer and the subscriber of the Surace system as the "user" of claim 10. The Examiner then takes this one step further, and argues that "storing, at a computing device, the individual character traits in a user profile having preference information for the user" is also taught or suggested by Surace, arguing that the "user" of claim 10 is the "actor" of Surace. (Office Action, p. 5).

In order to support his argument that Surace teaches the features of claim 10 (except for the missing element allegedly taught by Crawford), the Examiner has had to overload the term "user" to mean three separate entities (the developer, subscriber, and actor of Surace). These entities are entirely separate entities in the Surace system. In the invention encompassed by claim 10, it is clear that the same entity, the "user," is both the entity that specifies the individual character traits, and the entity associated with the "user profile" which additionally contains preference information for the user. Surace nowhere teaches or suggests a single entity that both specifies the individual character traits and is associated with the user profile. Surace instead allows only an implementer to define a personality type, not the user.

Under M.P.E.P. 2143.03, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." (M.P.E.P. 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385)). The Examiner fails to consider many of the words in the claim feature "storing ... the individual character traits in a user profile having preference information for the user". If the "user" associated with the "user profile" is in

fact an "actor" in Surace, the Examiner does not consider what the actor's profile might be, nor what kind of preference information might be associated with an actor.

Moreover, in the Examiner's Response to Arguments of the February 2009 Office Action, the Examiner attempted to clarify that "the developer stores the selected personality type on a profile and then virtual host is generated using the selected personality type (see page 12, paragraphs 0145-0147, 0149)." (February 2009 Office Action, p. 3). This argument is completely absent in the instant Office Action, and the Examiner does not address these arguments.

Paragraph [0145] of Surace is directed to selecting an actor based on their voice characteristics, and is not the same as ***"storing ... the individual character traits in a user profile having preference information for the user."***

Paragraph [0146] of Surace is directed to reading and recording the scripts by an actor, and is not the same as ***"storing ... the individual character traits in a user profile having preference information for the user."***

Paragraph [0147] of Surace is directed to the coaching of actors by a director, and is not the same as ***"storing ... the individual character traits in a user profile having preference information for the user."***

Paragraph [0149] of Surace is directed to selecting a specific prompt based on, for example, the "personality type of [the] voice user interface." However, as noted above, a subscriber of Surace never selects the individual "character traits" and rather is only able to select "from several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]). This is not the same as ***"storing ... the individual character traits in a user profile."***



Moreover, paragraph [0149] merely states that "[t]he selection of an appropriate specific prompt can be based on various factors," and says nothing of these factors being stored "in a user profile having preference information for the user." Accordingly, the disclosure of paragraph [0149] of Surace is not the same as "*storing ... the individual character traits in a user profile having preference information for the user.*"

It is therefore clear that in Surace there is no single entity which corresponds to the "user" of claim 10. Accordingly, Surace does not disclose or suggest at least "presenting an input interface to enable *the user* to specify individual character traits" and "storing ... the individual character traits in a *user profile* having preference information for *the user*."

Moreover, the Examiner has failed to address the further arguments presented with regard to claim 56. There is no single entity in Surace which can be associated with the login identifier of claim 56. Although an *implementer* (or developer) of the Surace system is able to define a personality type, including such characteristics as "age, gender, education, employment history, and current employment position," (Surace at [0043]) these characteristics are not received "from a communication device associated with a login identifier," as recited in claim 56. The implementer of the Surace system does not then likewise have a "profile corresponding to the login identifier" in which such characteristics are stored, as there is no indication that an implementer of the Surace system would have a login identifier for this purpose at all.

Moreover, Surace does not teach or suggest "receiving specified individual character traits from a communication device associated with a login identifier" where the *subscriber* is associated with the login identifier. Only the implementer of Surace is

able to define a personality type. The subscriber of Surace never selects the individual "character traits." Rather, the subscriber is only able to select "from several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]).

The Examiner's rejection demands that multiple entities in Surace act in concert to perform the method of claim 56. Therefore, it cannot be the case that Surace teaches or suggests a single "login identifier" as used throughout claim 56.

2. Surace does not teach, suggest, or disclose, "enabl[ing] the user to specify personality information comprising one or more individual character traits without regard to user interaction history."

During the telephone interview of October 28, 2009, the Examiner further articulated that the behavior of Surace in using the prompt history and recognition history to select a specific prompt teaches or suggests the specification of individual character traits, to which Applicants do not acquiesce.

With regard to this aspect of Surace, claim 10 has been amended to clearly recite that a user is able to "specify personality information comprising one or more individual character traits *without regard to user interaction history*." Moreover, when the virtual host is generated, it is done so "in accordance with the individual character traits, *in addition to behavior of the virtual host modified by user interaction history*," as further recited in claim 10.

This language of claim 10 clearly separates modification of the virtual host as a result of user interaction history from behavior which is a result of "generating the virtual

host with the consistent personality in accordance with the *individual character traits*," as further recited in claim 10.

As apparently agreed to by the Examiner during the telephone interview of October 28, 2009, there is necessarily a distinction between allowing a subscriber to "interview virtual assistants with different personalities in order to choose the voice user interface with a personality that is best suited for the subscriber's needs" and actually specifying the "*individual* character traits" and "*storing* ... the individual character traits in a user profile," as recited in claim 10. (Surace at [0113]). In Surace, the subscriber is required to choose from a pre-developed virtual assistant, and therefore at no point would ever have the individual character traits themselves stored in a user profile, as this is neither inherent (the user's selection can be identified by association with the virtual assistant, rather than its individual traits) nor anywhere taught, suggested, or disclosed by Surace.

When the voice user interface of Surace selects a prompt, it does so based on "the personality type of the voice user interface 1002 configured for the subscriber and the subscriber's expertise with using voice user interface with personality 1002." (Surace at [0149]). The selection based on expertise in Surace is not based on individual character traits, and is instead specified based on "user's experience across sessions." (Surace at [0065]). This is akin to modification based on user interaction history, and in the language of claim 10 must necessarily be something different than the "individual character traits." Moreover, things like the user's expertise with the system are not actually "character traits" which are used to select "a consistent personality for [the]

virtual host," and are instead strictly direct modifications of the behavior of the virtual host based on the user's interaction.

3. Surace does not teach, suggest, or disclose, "storing ... the individual character traits in a user profile having preference information for the user."

During the interview of October 28, 2009, the Examiner indicated that individual character traits are specified as shown in FIG. 3 and paragraphs [0042] and [0043] of Surace, to which Applicants do not acquiesce. As previously noted, this is all behavior performed at the implementation/development stage of a voice user interface. (Surace at [0038], "An Overview of an *Implementation* of a Computer-Implemented Voice User Interface with Personality").

Applicants noted during the interview that the developer of Surace is not a user in the sense of claim 10. The Examiner argued that a developer could be a user, and would therefore store character traits in some sort of profile, to which Applicants do not acquiesce. This rationale is incorrect for several reasons.

As clearly articulated in claim 10, "the individual character traits [are stored] in a user profile having preference information for the user." No such profile which would have any sort of preference information exists in Surace, either explicitly or implicitly. In fact, any individual character traits which are used in the development process to select a personality do not appear to be stored anywhere in Surace. Surace describes selecting a personality with a complete description including "age, gender, education, employment history, and current employment position." (Surace at [0043]).

However, Surace subsequently selects an actor at step 306 of FIG. 3, and then generates a dialog at step 308. This dialog is generated, and scripts written, based on the personality. (Surace at [0045]-[0046]). When the application is implemented, it is "based on the application requirements *and the dialog*," and not any "individual character traits." (Surace at [0047]).

Therefore, even if individual character traits are somewhere determined in the creation of a personality in Surace, nowhere are they explicitly or implicitly stored. All the voice user interface of Surace needs is the resulting dialog, and storing character traits would be extraneous and unnecessary. Moreover, this all happens during development/implementation of the Surace voice user interface, such that even if they were stored, *arguendo*, they would not be stored "in a user profile having preference information for the user," as recited in claim 10.

4. Crawford does not supply the missing teaching or suggestion

Crawford does not teach or suggest, nor does the Examiner rely on Crawford to allegedly teach or suggest, any of the aforementioned features discussed with regard to Surace. Neither does the combination of Surace and Crawford teach or suggest any of the above missing features. Instead, the Examiner relies on Crawford to allegedly teach "that the consistent personality defines adjustments to one or more interface features." (Office Action, p. 6).

Crawford is directed to a "personality profile adjustment" which "allow[s] the reacting character to have an 'emotional reaction' to the event which was just executed, or the event which the character just learned about from another character." (Crawford,

13:7-29). This is entirely different than a "***consistent personality*** [that] defines adjustments to one or more user interaction features of the virtual host," where the consistent personality is selected "based on the specified personality information," as recited in claim 10.

What Crawford discloses is "adjusting personality profile parameters" ***based on an event***, and not on a consistent personality selected "based on the ***specified personality information***," which comprises "one or more individual character traits," as recited in claim 10.

#### 5. Conclusion

For at least the foregoing reasons, claims 10, 56, 65, 74, and 89 are not rendered obvious by the combination of Surace and Crawford. Additionally, ***the Examiner is requested to consider and address every argument presented in this and the previous reply.***

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of 10, 56, 65, 74, and 89 under 35 U.S.C. § 103(a).

#### **Claims 11-18, 57-64, 66-73, and 75-88**

The Examiner has rejected claims 11-18, 57-64, 66-73, and 75-88 under 35 U.S.C. § 103(a) as allegedly being obvious over Surace in view of Crawford, and further in view of:

- [Claims 11, 57, 66, and 75] U.S. Patent No. 6,301,339 to Staples *et al.* ("Staples");
- [Claims 12, 58, 67, and 76] U.S. Patent No. 5,189,702 to Sakurai *et al.* ("Sakurai");

- **[Claims 13, 59, 68 and 77]** U.S. Patent No. 5,768,508 to Eikeland ("Eikeland");
- **[Claims 14, 60, 69, and 78]** U.S. Patent No. 5,911,043 to Duffy *et al.* ("Duffy");
- **[Claims 15, 61, 70 and 79]** U.S. Patent No. 6,366,882 to Bijl *et al.* ("Bijl"); and
- **[Claims 16-18, 62-64, 71-73 and 80-82]** U.S. Patent No. 4,531,184 to Wigan *et al.* ("Wigan").

Applicants respectfully traverse these rejections. Staples, Sakurai, Eikeland, Duffy, Bijl, and Wigan do not overcome the deficiencies of Surace and Crawford relative to independent claims 10, 56, 65, and 74 described above. Claims 11-18 depend from claim 10; claims 57-64 depend from claim 56; claims 66-73 depend from claim 65; and claims 75-82 depend from claim 74. For at least these reasons, and further in view of their own features, claims 11-18, 57-64, 66-73, and 75-82 are patentable over Surace, Staples, Sakurai, Eikeland, Duffy, Bijl, and Wigan. Reconsideration and withdrawal of the rejections is therefore respectfully requested.

Claims 83-88 have been rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Surace in view of U.S. Patent No. 4,964,077 to Eisen *et al.* ("Eisen"). Independent claim 83 recites, *inter alia*, "presenting an input interface to enable the user to specify personality information comprising one or more individual character traits" and "storing ... the individual character traits in a user profile including user interaction history information." Independent claim 85 recites, *inter alia*, "a receiving module configured to receive personality information comprising one or more individual character traits" and "a storing module configured to store the individual character traits in a profile that includes interaction history information within the memory." Independent claim 87 recites, *inter alia*, "receiving specified personality information

comprising one or more individual character traits" and "storing the individual character traits in a profile having preference information."

As noted above with regard to independent claim 10, Surace does not teach or suggest the aforementioned features of independent claims 83, 85, and 87. Eisen does not teach or suggest, and is not used by the Examiner to teach or suggest, the missing feature. Accordingly, claims 83, 85, and 87 are patentable over Surace and Eisen. Claims 84, 86, and 88 depend from claims 83, 85, and 87, respectively, and are also patentable over Surace and Eisen for at least the same reasons as claims 83, 85, and 87, and further in view of their own respective features. Reconsideration and withdrawal of the rejections is therefore respectfully requested.

***Withdrawal of Finality of Office Action***

As the Examiner has failed to address the previously presented arguments, which remained applicable to the current rejection, Applicants request that the Examiner withdraw the finality of the instant Office Action and, if necessary, issue a new Office Action properly and completely addressing each and every one of Applicants' arguments, per the Examiner's obligation under M.P.E.P. § 707.07(f). Without the benefit of the Examiner's complete rationale in response to Applicants' arguments, the purpose of this prosecution is frustrated and results in an otherwise avoidable delay.

Although Applicants' representatives held a telephone interview with the Examiner on October 28, 2009 to further clarify the rejections, it is still the Examiner's responsibility to fully address the substance of each and every one of Applicants' arguments *in writing* in order to create a written record of the prosecution.



***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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